

**REMARKS**

Claims 1-38 are currently pending in this application. Claims 2, 8-12, 19-24, 29-32, 34, and 37-38 are withdrawn as drawn to a non-elected species. Claims 2, 6, 11, 17, 23, 27, 31 and 34 have been amended. Accordingly claims 1, 3-7, 13-18, 25-28, 33, and 35-36 are currently under consideration. No new matter has been added.

Election of a patentably distinct species has been required under 35 USC § 121:

I Claims 1, 3-7, 13-18, 25-28, 33 and 35-36: a difference in a radiation loss of light between a basic horizontal-lateral mode and a 1st-order horizontal-lateral mode is 10 cm<sup>-1</sup> or more, the light generated in the active layer, the propagation loss of light directed toward a main side of at least either the lower clad layer or the upper clad layer, the main side being opposite to an active side of the lower clad layer or the upper clad layer.

II Claims 2, 8-12, 19-24, 29-32, 34 and 37-38: a refractive index of at least either the lower clad layer or the upper clad layer is below an effective index against light in a basic horizontal-lateral mode, and equal to or more than an effective index against light in a 1st-order horizontal-lateral mode, the light generated in the active layer.

Applicants elect group I with traverse, claim 2 has been amended to depend from claim 1 and claim 34 has been amended to depend from claim 33. In light of the amendments neither claims 2 or 34 are patentably distinct species because claim 2 adds an additional limitation to claim 1 and claim 34 adds an additional limitation to claim 33. Claims 8-12, 19-24, 29-32 add further limitations to claim 2 and claims 37-38 add further limitations to claim 34. Thus the requirement to elect a single disclosed species is moot.

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and

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authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no.

559692000100. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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